The Odisha Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 2463 CUTTACK, MONDAY, AUGUST 4, 2025/SRAVANA 13, 1947

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 30th July 2025

S.R.O. No. 581/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th June 2025 passed in the I.D. Case No. 05 of 2018 by the Presiding Officer, Industrial Tribunal, Rourkela on the Industrial Dispute between the Management of M/s IDCOL Kalinga Iron Works, At Matkambeda, Dist. Keonjhar and President, Barbil Workers Union, At/P.O. Bolani, Dist. Keonjhar was referred for adjudication is hereby published in the schedule below :—

SCHEDULE

BEFORE THE INDUSTRIAL TRIBUNAL, ROURKELA

INDUSTRIAL DISPUTE CASE NO. 05 of 2018

Dated the 18th June 2025

Present :

Shri Benudhar Patra, B.Sc. LL.M.,
Presiding Officer,
Industrial Tribunal,
Rourkela.

Between :

The Management of —
M/s IDCOL Kalinga Iron Works,
At Matkambeda,
Dist. Keonjhar. . . First Party

And

President, Barbil Workers Union,
At P.O. Bolani,
Dist. Keonjhar. . . Second Party

Appearances :

Shri Bibhu Prasad Panda, Advocate	: For the First Party
Reyaz Mohammed Latif, President of the Union.	: For the Second Party

AWARD

The Government of Odisha, Labour & E.S.I. Department in exercise of their powers conferred by sub-section (5) of Section 12 read with Clause (d) of sub-Section (1) of section 10 the Industrial Disputes Act, 1947 (for short 'the Act') have referred the following dispute vide their Order No. 8214 IR(ID)2018/LESI, Bhubaneswar, dated the 6th December 2018 for adjudication :—

Schedule

"Whether the retrenchment from service of Shri K. K. Singh and 151 other contract labourers of M/s IDCOL Kalinga Iron Works, Matkambeda, Keonjhar is legal and/or justified ? If not, what relief they are entitled to ?"

2. Before narrating the respective stand of the parties in connection with the instant dispute, the factual matrix as culled out from the conciliation failure report annexed to the order of reference, needs a little mention.

By virtue of orders passed by the Hon'ble Court in W.P (C) No. 9531 of 2014 the alleged illegal retrenchement of the disputants involved in the reference was admitted for conciliation, wherein it was stated by the President of the 2nd party union that although the matter relating to the retrenchment of the disputants was placed before the management highlighting that in view of the disputants rendering continuous service the employer in utter disregard to the provisions of the Act has effected retrenchment of the disputants, but the management paid a dea fear to such grievance and as such the union put forth a demand for their reinstatement in service with back wages. The management on the other hand, took the plea that the disputants being contract labourers they were being paid all their statutory dues by the contractors and on expiry of the contract/agreement entered into between the principal employer and the contractors, they all have received their legitimate statutory dues/terminal benefits as per the provisions of the Odisha Contract Lobour (R&A) Rules, 1975 (Condition of Service), and therefore there was no scope for engagement or reinstatement of the disputants in job. In the above beckground, when there could be no amicable settlement of the dispute between the parties, on submission of a failure report the present reference was made by the appropriate Government for adjudication.

3. In nutshell, the case of the 2nd party union is that the disputants involved in the present reference numbering 152 had been working continuously under the 1st party management since last 10 to 15 years being engaged in permanent and perennial natural of job like pig iron production, maintenance, cleaning etc., but they were deprived of the benefits of equal wages and facilities as were being paid to the other regular workers. It is stated that on a dispute being raised for payment of equal wages to the disputants, the management refused them entry to the factory premises and ultimately retrenched them from service in sheer violation of the provisions of Section 25-N of the Act. Further stand of the union is that the so called contractors named by the management were

for namesake only and were dubiously reflected as the employers of the disputants with a view to deny the disputants their job security and rightful benefits. As such, the union has alleged that the so called contracts were nothing but sham and camouflage and were intended to victimise the workers. In the above background, the union has claimed termination of service of the disputants an illegal and has prayed for their reinstatement in job with back wages.

4. The management, on being noticed entered appearance in the dispute and filed its written statement stating at the outset that the reference is not maintainable on the following grounds :—

(i) The termination of job of the disputants on account of closure of contractor's establishment on expiry of the period does not come within the definition of 'retrenchment'.

(ii) The dispute raised does not come under the definition of 'industrial dispute', inasmuch as the 1st party management is not the employer in respect of the disputants.

(iii) The instant proceeding suffers from non-joinder and mis-joinder of necessary parties, inasmuch as, the contractor establishment have not been made parties to the dispute.

(iv) Neither 'Barbil Workers' Union, nor Mr. Reyaaz Mohammed Latif has any *locus standi*/authority/ competency to represent the disputants in the present dispute.

On merit, it is the specific stand of the management that the 1st party management had obtained registration to engage contractors and so also the contractors had their valid licenses under the Contract Lobour (Regulation & Abolition) Act, 1970 to execute the work of the 1st party on the basis of written work orders/contract for a specific period and for all purpose the concerned were the employers of the disputants. Elaborating its stand, the 1st party has stated that the disputants were discharging their duties under the direct control and supervision of the contractors, who were responsible for payment of wages and all other statutory benefits including retrenchement/closure compensation etc. It is stated that on expiry of the contracts the contractors have closed the establishments by paying all the outstanding wages and benefits including the closure/retrenchment compensation as applicable to the contract labourers. It is stated that as per the records furnished by the contractors' establishment, 140 numbers if disputants were employed by the respective contractors and the names of rest 12 persons do not find place in the record of any contractor and as such they are the outsiders. It has also been stated that due to heavy financial loss the operation of the plant of the 1st party has been completely stopped with effect from the 1st March 2015 resulting a huge loss to the company to the tune of 134,866,239.40 during 2013-14 and now the accumulated loss is to the tune of Rs. 143,502,538.24 as a result whereof some regular employees have taken voluntary retirement under the scheme and the contracts with the respective contractor have been terminated by efflux of time and there is no work available with 1st party management. In the premises, the management has prayed to reject the claim of the 2nd party as laid in the instant reference.

5. The 2nd party Union filed a rejoinder in response to the written statement filed by the management. Reiterating its stand taken in the claim statement the Union has asserted that 1st party management having issued E.S.I. Cards in favour of disputants, the 1st party was duty bound to comply with the provisions Section 25-N of the Act while effecting retrenchment of the disputants from service with effect from the 13th June 2013.

6. On the basis of the pleadings of the parties, following issues have been framed :—

ISSUES

(i) Is the reference maintainable ?

(ii) Whether there is employer and employee relationship between IDCOL Kalinga Iron Works Ltd. and K. K. Singh and 151 other contract labourers involved in the present dispute ?

(iii) Whether the retrenchment from service of Shri K. K. Singh and 151 other contract labourers of M/s IDCOL Kalinga Iron Works, Matkambeda, Keonjhar is legal and/or justified ?

(iv) If so, or not, what relief they are entitled to ?

7. In course of hearing, two witnesses were examined on behalf of the second party union and reliance was placed on documents which have been marked as Exts. 1 to 3. The first party, on the other hand, examined one witness from its side and placed reliance on documents marked Exts. A to H.

8. Before adverting to the issues, it is felt appropriate to place on record some developments which have been cropped up during the pendency of the dispute. As it reveals from record, the management had challenged the reference before the Hon'ble Court in W.P (C) No. 12050 of 2019 and while disposing of the said writ application the Hon'ble Court vide order, dated the 20th November 2023 have held as follows :—

"xx xx xx xx xx

6. It is positive case of persons mentioned in the schedule, run by opposite party No. 4 that they were engaged directly by petitioner management. They have to produce the evidence. The management in denying the assertion, cannot produce evidence in the negative. In event evidence of contracts is adduced, the Tribunal is to enquire and find out also whether the contracts were subterfuge created by the management to camouflage having engaged the workmen.

7. In view of the last preceding paragraph we reproduce below paragraph 9 from counter of opposite party Nos. 1 and 2, relied upon by petitioner.

'9. That in reply to the averments made in Para. 3 of the writ petition it is humbly submitted that the contractor (s) is/are the employer (s) in respect of contract labourers, who come within the ambit of the term 'Workman' under Section 2 (s) of the Industrial Disputes Act, 1947 when such workmen are employed and paid their wages by the contractors. Ultimate supervision and control over such workmen rests with the respective contractors inasmuch as the contractors take disciplinary action over their workmen including termination of their services, for any reason whatsoever'.

8. We make it clear, to answer the reference the Tribunal, if required will go into the allegation that the workmen had been engaged by contractors. In event the Tribunal finds that there were genuine contracts then the Tribunal can return finding that there was no employer-employee relationship between management principal employer and the workers to answer the reference.

xx xx xx xx xx"

Keeping in view the orders of the Hon'ble Court, as referred to *supra,* the issues need to be determined basing on the evidence available on record, both oral as well as documentary.

FINDINGS

9*. Issue Nos. (i)& (ii)*—To substantiate the plea that the members of the second party were directly employed by the first party, the union rests on the evidence adduced on its behalf through W.W. 1 and W.W. 2 and documents such as original E.S.I. Card of one of the disputants namely Manki Laguri, (Exts. 1); E.P.F account slips of W.W. 1 for the years 2011-12 & 2012-13 (Exts. 2 and 2/a) and Identity Card issued by the ESIC in favour of one Gandhari Karua. While W.W. 1 stated in his evidence that he was working under the first party since the 1st January 1994, W.W. 2 stated in her evidence that she was working under the first party since the 1st September 2006. Both of them have stated that they were not provided with any appointment letters but they were issued with Identity Cards by the E.S.I.C. It is also stated by both the witnesses that their attendance was being taken by the company; allotment of work was done by the company's supervisor and they were being paid by the company's accounts section after putting their signatures on many registers and documents. It is stated by them that on a demand being raised for payment of minimum wages and in that connection a strike was staged for non-fulfilment of such demand, they along with others were thrown out of employment and were not allowed to enter into the premises of the first party. The first party extensively cross-examined both the witnesses of the union and they stated in their cross-examination at Para. 10 that the contractors who were named in the conciliation failure report have not been made parties to the proceeding. Both of them also admitted that no advertisement was issued for their engagement and no appiontment letters were issued to them. It has also been elicited by the first party during cross-examination of W.W. 1 & W.W. 2 that no document is filed by the union in support of their continuous engagement under the first party, nor any communication is filed showing correspondences between them and the first party or *vice versa*. Both the witnesses feigned their knowledge as to under what provision Ext. 1 and Ext. 3 (E.S.I. Cards) were issued in their favour. W.W. 1 stated in his cross-examination that he does not possess any PF Slips other than Ext. 2 and Ext. 2/a. Similarly, it has been brought in the cross-examination of W.W.2 that Exts. 3 does not bear the name of the employer. While W.W. 1 stated in his cross-examination that no document is filed in support of his membership under the Barbil Workers' Union, W.W. 2 denied her membership under the said Union.

The first party, on the other hand, examined M.W. 1, its Manager (HRD) & Unit Head, who stated in his examination in chief that M/s IDCOL Kalinga Iron Woks Ltd., does not exist any more; the same being amalgamated with M/s Odisha Mining Corporation Ltd. He stated that for various non-core activities and allied works which were casual in nature the previous management had engaged independent contractros through open tenders for such activities which were not prohibited in law and accordingly series of work orders were issued in favour of independent contractors which were extended from time to time, subject to the requirement of the management and the last work orders were extended up to the 30th June 2014. He specifically deposed that the disputants involved in the proceeding were never engaged by the management nor terminated by it, rather the respective contractors had terminated their services and as such there exists no employer-employee relationship between the parties. It is in his evidence that under the Employees Provident Fund & Misc. Act, 1952 & the Employees State Insurance Act, 1948, the word "employer" includes

"Principal Employer". On behalf of the first party he relied on Ext. A, series of work orders issued in favour of different contractors; Ext. B, copy of the notice issued by the first party dated the 6th November 2013 to M/s Mahima Enterprises intimating about termination of work order with effect from the 5th December 2013 Ext. C; copy of Certificate of Registration bearing No. 09, dated the 18th July 1977 issued by the Registering Officer in favour of the first party to employ contract labourers under the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 and the contract labour licenses issued in favour of different contractors; Ext. D, photo copy of the Recruitment Rules, 1981 of the first party; Ext. E, extract of Register of Wages-*cum*-Muster Roll of different contractors; Ext. F, extract of bonus payment register of different contractors; Ext. G, extract of leave payment register of the contractors and Ext. H, photocopy of note sheets maintained by the first party. During cross-examination, M.W. 1 admitted that there is stipulation in the work orders that the management has to see the statutory compliances by the contractors and so also, he admitted regarding the retrenchment of the disputants by the contractors, but he failed to say as to if the provisions of Section 25-N of the Act were complied with by the contractors at the time of retrenchment of the disputants or not. In cross-examination he could not remember under which contractors the witnesses of the second party were working. He denied the suggestion of the second party that the disputants are entitled for all the statutory benefits as per sub-section (7) of Section 25-N of the Act in view of non-compliance of Section 25-N of the Act.

10. On an analysis of the evidence as discussed above, it transpires from Ext. C that the first party was permitted by the competent authority to employ contract labourers in its establishment and so also labour licenses were also issued in favour of different contractors to execute different works pursuant to the work orders, marked Ext. A. In addition to the above, the documents under Ext. E, F and G, the ectract of registers of Wages-*cum*-Muster Roll of different contractors; Bonus Payment Register and Leave Payment Register, respectively are also suggestive of the fact that to undertake different works the first party had engaged contractors for supply of labour. None of the documents produced on behalf of the first party was objected by the second party challenging its authenticity. That apart, not a single scrap of paper is available on record showing payments to have been made to the disputants by the first party and not by the contractors. In a proceeding like the present one, payment of wages to the employee bears an important role to decide the employer-employee relationship between the parties. A reference in this regard may be made to the authoritative pronouncements of the Hon'ble Apex Court in the case of Bengal Nagpur Cotton Mills, Rajnandgaon *Vs*. Bharat Lal and another, reported in 2011 (128) FLR 560, wherein it has been held that two of the well-recognized tests to find out whether a labourers is a direct employee of the principal employer are :—

(1) Whether the principal employer pays the salary instead of the contractors and ;

(2) whether the principal employer controls and supervises the work of the employee.

Further, the Hon'ble Apex Court in the case of Silver Jubilee Tailoring House *Vs.* Chief Inspector of Shops and Establishments [(1973) 2 LLJ 495], held that during the last three decades the emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor but it is wrong to say that in every case, it is decisive.

11. In the case in hand, in absence of any positive evidence to the effect that the disputants used to receive their monthly wages from the first party, it is difficult on the part of this Tribunal to hold that there existed employer-employee relationship between the first party and the disputants. On the other hand, the materials available on record indicate that the first party on being permitted by the competent authority had engaged different licensed contractors in its establishment and had issued work orders to execute its work and therefore, by no stretch of imagination such contracts can be held to be sham or camouflage.

Issue Nos. (i) and (ii) are answered accordingly.

12. *Issue Nos. (iii) & (iv)*— Under these issues, the Tribunal is required to determine the legality and justifiability of the action of the management in retrenching the disputants from service and the relief to which to which they are entitled. In view of the findings arrived at on Issue Nos. (i) & (ii) though discussions on Issue Nos. (iii) and (iv) become academic in absence of the contractors not being added as parties to the proceeding, yet for the purpose of answering the reference a glance over the cross-examination of W.W. 1 and W.W. 2 is felt necessary wherein they have stated that no document is filed in support of their continuous engagement under the first party. It is the settled principle of law that in order to claim protection of the provisions of Section 25-N of the Act, the claimants have to establish that they had rendered continuous service for a period of 240 days preceding the date of the alleged retrenchment and therefore, they are entitled to the benefits thereof. In the case in hand, no attempt seems to have been made by the union to establish such aspect so as to derive the benefits of the provisions of Section 25-N of the Act. In this connection, it is profitable to refer to the verdict of the Hon'ble Apex Court in the case of R.M. Yellatti *V.* The Asst. Executive Engineer (JT 2005 (9) SC 340), wherein their Lordships of the Hon'ble Apex Court have held as follows :—

> "Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceeding under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. xx xx xx xx".

13. So, viewing from this angle also, the second party union is found to have failed to substantiate continuous service of the disputants as per the provisions of Section 25-B of the Act so as to claim benefits under the provisions of Section 25-N of the Act. The above discussion, therefore, leads this Tribunal to conclude that the disputants represented by the union are not entitled to any relief in the present proceeding.

Dictated and corrected by me.

BENUDHAR PATRA
18-06-2025
Presiding Officer
Industrial Tribunal, Rourkela

BENUDHAR PATRA
18-06-2025
Presiding Officer
Industrial Tribunal, Rourkela

[No. 6889—LESI-IR-ID-0016-2018-LESI.]

By order of the Governor
MADHUMITA NAYAK
Special Secretary to Government

Printed and Published by the Director, Directorate of Printing, Stationery & Publication, Odisha, Cuttack-10
Ex. Gaz. 1673—173+9